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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2014

SHAUN KOEN
6800 N. Maple Avenue Apt.#138
Fresno, CA 93710

A C C U S A T I O N

Respiratory Care Practitioner License No. 22734

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about December 24, 2002, the Respiratory Care Board issued Respiratory Care Practitioner License Number 22734 to Shaun Koen (Respondent). The Respiratory Care Practitioner License expired on May 31, 2005, and has not been renewed.

DISCIPLINARY HISTORY

3. On or about July 17, 2002, the Board filed Statement of Issues no. S-307 against respondent based on violations of Business and Professions Code sections 3750(d) [conviction], 3750.5(b), 475(a)(2), 475 (a)(4), 480(a)(1), 480(a)(3); CCR 1399.370(a) and (c) in

1 that respondent had two alcohol-related convictions: on June 3, 1996, respondent was convicted
2 on his plea of guilty to Vehicle Code section 23152(a) [driving while under the influence of
3 alcohol or drugs, a misdemeanor.] Also, on May 28, 1999, respondent was convicted by a plea of
4 guilty of violating 36 Code of Federal Regulations 4.23(a)(1) [operating a motor vehicle under the
5 influence of alcohol], a misdemeanor.

6 4. On or about December 10, 2002, case no. S-307 was resolved by
7 stipulation. Respondent was issued a conditional license, on probation for two years on terms and
8 conditions, effective December 24, 2002. Respondent completed his probation on December 24,
9 2004.

10 JURISDICTION

11 5. This Accusation is brought before the Respiratory Care Board (Board),
12 Department of Consumer Affairs, under the authority of the following laws. All section references are
13 to the Business and Professions Code unless otherwise indicated.

14 6. Section 3710 of the Code states: "The Respiratory Care Board of
15 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
16 the Respiratory Care Practice Act]."

17 7. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
18 revoke licenses to practice respiratory care as provided in this chapter."

19 8. Section 3750 of the Code states:

20 "The board may order the denial, suspension or revocation of, or the imposition of
21 probationary conditions upon, a license issued under this chapter, for any of the following
22 causes:

23 "(d) Conviction of a crime that substantially relates to the qualifications, functions,
24 or duties of a respiratory care practitioner. The record of conviction or a certified copy
25 thereof shall be conclusive evidence of the conviction.

26 "(f) Negligence in his or her practice as a respiratory care practitioner.

27 "(g) Conviction of a violation of any of the provisions of this chapter or of any
28 provision of Division 2 (commencing with Section 500), or violating, or attempting to

1 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
2 violate any provision or term of this chapter or of any provision of Division 2 (commencing
3 with Section 500).

4 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
5 substantially related to the qualifications, functions, or duties of a respiratory care
6 practitioner.

7 9. Section 3750.5 of the Code states:

8 "In addition to any other grounds specified in this chapter, the board may deny,
9 suspend, or revoke the license of any applicant or license holder who has done any of the
10 following:

11 "(a) Obtained or possessed in violation of law, or except as directed by a licensed
12 physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or
13 administered to another, any controlled substances as defined in Division 10 (commencing with
14 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
15 (commencing with section 4015) of Chapter 9.

16 "(b) Used any controlled substance as defined in Division 10 (commencing with
17 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2
18 (commencing with section 4015) of Chapter 9.

19 "(d) Been convicted of a criminal offense involving the consumption or
20 self-administration of any of the substances described in subdivisions (a) and (b), or the possession
21 of, or falsification of a record pertaining to, the substances described in subdivision (a), in which
22 event the record of the conviction is conclusive evidence thereof.

23 10. Section 3755 of the Code states:

24 “The board may take action against any respiratory care practitioner who is charged
25 with unprofessional conduct in administering, or attempting to administer, direct or indirect
26 respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of
27 clearly administering directly or indirectly inappropriate or unsafe respiratory care
28 procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques,

1 and violation of any provision of Section 3750. The board may determine unprofessional
2 conduct involving any and all aspects of respiratory care performed by anyone licensed as
3 a respiratory care practitioner.”

4 COST RECOVERY

5 11. Section 3753.5, subdivision (a) of the Code states:

6 "In any order issued in resolution of a disciplinary proceeding before the board, the
7 board or the administrative law judge may direct any practitioner or applicant found to have committed
8 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and
9 prosecution of the case."

10 12. Section 3753.7 of the Code states:

11 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include
12 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,
13 and service fees."

14 13. Section 3753.1 of the Code states:

15 "(a) An administrative disciplinary decision imposing terms of probation may include,
16 among other things, a requirement that the licensee-probationer pay the monetary costs associated with
17 monitoring the probation. "

18 14. California Code of Regulations, title 16, section 1399.370, states:

19 "For the purposes of denial, suspension, or revocation of a license, a crime or act
20 shall be considered to be substantially related to the qualifications, functions or duties of a
21 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
22 perform the functions authorized by his or her license or in a manner inconsistent with the
23 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
24 those involving the following:

25 "(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting
26 the violation of or conspiring to violate any provision or term of the Act.

27 "(c) Conviction of a crime involving driving under the influence or reckless driving
28 while under the influence."

1 FIRST CAUSE FOR DISCIPLINE

2 (Obtained or possessed a controlled substance; unprofessional conduct)

3 15. Respondent is subject to disciplinary action under sections 3750.5(a)
4 [obtained or possessed a controlled substance], 3750.5(b) [used a controlled substance], 3750(j)
5 [dishonest act] and 3755 [unprofessional conduct] in that he stole narcotics by inserting a syringe
6 into a patient's intravenous line and withdrew medication. The circumstances are as follows:

7 16. On or about May 1, 2005, respondent was employed as a respiratory care
8 practitioner in the intensive care unit at Community Medical Centers -University Medical Center in
9 Fresno, California. T.C., a nurse at UMC, was advised by staff that the inventory of the amount of
10 narcotics used and amount remaining for patients did not match. Without respondent's knowledge,
11 T.C. observed respondent in Patient A.'s room. T.C. saw respondent standing by Patient A.'s
12 bedside, and observed respondent inserting a syringe into Patient A.'s intravenous line which
13 contained narcotic medication. T.C. confronted respondent and escorted respondent to the
14 manager's office. Respondent admitted that he was trying to obtain narcotics from Patient A.'s
15 intravenous line, and stated that he had obtained narcotics in a similar manner from other patients
16 in the past. He stated that he had not ingested any of the drugs during his shift and used the drugs
17 when he went home to sleep.

18 17. K.B., the manager of respiratory care services, requested that respondent
19 undergo a drug screening test. Respondent agreed, and provided a urine sample. UMC placed
20 respondent on administrative leave, pending investigation of the incident, and he was immediately
21 relieved of all patient care and sent home by taxi. Respondent's drug screen tested positive for
22 barbiturates (Fentanyl) and benzodiazepines (Atavin), the same drugs taken from Patient A.'s
23 intravenous line.

24 18. K.B. attempted to contact respondent many times to discuss the results of
25 UMC's investigation, but he failed to respond. On May 6, 2005, respondent's employment was
26 terminated.

27 19. Respondent's license is subject to discipline because he violated code
28 sections 3750.5(a) [obtained or possessed a controlled substance], 3750.5(b) [used a controlled

substance], 3750(j) [dishonest act] and 3755 [unprofessional conduct] in that he stole narcotics by inserting a syringe into a patient's intravenous line and withdrew medication.

SECOND CAUSE FOR DISCIPLINE

(Substantially related conviction)

20. Respondent is subject to disciplinary action under sections 3750(d), 3752, and CCR 1399.370(c) [conviction of a substantially related crime] in that he was convicted of violating Vehicle Code section 23152(a), driving under the influence of drugs and/or alcohol. The circumstances are as follows:

21. On or about March 14, 2005, California Highway Patrol Officer L. Pevyhouse was on patrol. The Fresno Dispatch Center advised Officer Pevyhouse that they had received a call of a reckless driver on northbound SR-43 approaching Floral Avenue. Officer Pevyhouse saw a 2001 white Jeep vehicle matching the description, and observed that the driver was rapidly passing several vehicles, and straddling the lane dividing lines. He activated his unit's red emergency lights; however, respondent continued driving. Officer Pevyhouse then activated his unit's siren for a short blast and followed the vehicle to the east shoulder of the northbound traffic lanes. Officer Pevyhouse made contact with the driver, and asked for license and registration. The driver did not have his license and self-identified as respondent. Officer Pevyhouse asked respondent to step out of the vehicle, and walk to the front of it. He observed that respondent's eyes were droopy and he appeared very drowsy. Respondent was unable to maintain his balance while standing still. Respondent denied consuming alcohol or drugs. Officer Pevyhouse explained a series of field sobriety tests to respondent, and asked him to perform the tests. Respondent's performance was unsatisfactory. Respondent took a Preliminary Alcohol Screening (P.A.S.) test which was negative for the presence of alcohol. Based on respondent's driving, his objective symptoms of impairment and his poor performance on the field sobriety tests, Officer Pevyhouse arrested respondent for violating Vehicle Code section 23152(a), driving under the influence of alcohol and/or drugs and Health & Safety code section 11550(a), under the influence of a controlled substance.

A. Respondent was transported to the Fresno Area Office, where

1 Officer T.N. Calk conducted a Drug Influence Evaluation report (DRE.) Respondent stated that
2 he was taking the prescription medications Clonapin, Xanax and Valium. He stated that he had
3 ingested two Valium pills, 2 milligrams each, the day before the arrest. Officer Calk determined
4 that respondent was under the influence of a depressant. He was informed of Vehicle Code
5 section 23612, and his choice of a test was limited to a urine sample due to possible drug
6 impairment. Respondent submitted a urine sample for drug analysis, and was then transported to
7 Fresno County Jail for booking for violations of Vehicle Code section 23152(a), driving under the
8 influence of alcohol and/or drugs and Health & Safety code section 11550(a), under the influence
9 of a controlled substance, and Vehicle Code section 23222(a), an infraction, possession of an open
10 container while driving.

11 22. On or about June 8, 2005, a criminal complaint titled *People of the State of*
12 *California vs. Shaun Eric Koen*, case no. T05904288-8 was filed in Fresno County Superior
13 Court, Central Division. Count 1 charged respondent with a violation of Vehicle Code section
14 23152(a), driving under the influence of alcohol and/or drugs. It was further alleged that within
15 seven years of this offense, on May 28, 1999, respondent was convicted of Vehicle Code section
16 23152(b), driving with a blood alcohol level above .08%. Count 2 charged respondent with a
17 violation of Health & Safety code section 11550(a), unlawful use and being under the influence of
18 a controlled substance. Count 3 charged respondent with a violation of Vehicle Code section
19 23222(a), an infraction, possession of an open container while driving.

20 23. On or about October 27, 2005, respondent was convicted upon his plea of
21 no contest to a violation of Vehicle Code section 23152(a). Counts 2 and 3 were dismissed in light
22 of the plea to Count 1, and respondent admitted the prior conviction of May 28, 1999.

23 Judge W. Kent Levis accepted the plea and sentenced respondent as follows: three years
24 conditional probation, twenty days county jail, execution of sentence stayed to December 27,
25 2005. He was ordered to pay a fine of \$1,515.00, \$100.00 restitution fine, plus \$20.00 CSF. He
26 was ordered to attend an SB38 program and his driver's license was restricted for 18 months

27 24. Therefore, respondent's license is subject to discipline based on his
28 conviction upon his plea of no contest to a violation of Vehicle Code section 23152(a), driving

1 under the influence of alcohol, in violation of code sections 3750(d), 3752, and CCR 1399.370(c)
2 [conviction of a substantially related crime.]

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

6 1. Revoking or suspending Respiratory Care Practitioner License Number
7 22734, issued to Shaun Koen.

8 2. Ordering Shaun Koen to pay the Respiratory Care Board the costs of the
9 investigation and enforcement of this case, and if placed on probation, the costs of probation
10 monitoring;

11 3. Taking such other and further action as deemed necessary and proper.

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13
14 DATED: February 3, 2006

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17 Original signed by Liane Zimmerman for:

18 STEPHANIE NUNEZ

19 Executive Officer

20 Respiratory Care Board of California

21 Department of Consumer Affairs

22 State of California

23 Complainant
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